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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
077528-593	05/24/90	VAN NEST	34374/CHIR-0

KRAUS, E EXAMINER

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ART UNIT PAPER NUMBER  
1811

DATE MAILED:

11/18/91

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on 9/9/91 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire three month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                  |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.  | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____   |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-35 are pending in the application.  
Of the above, claims 10-28 and 31-35 are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☒ Claims 1-9 and 29-30 are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

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Claims 1-35 are pending in this application.

Claims 10-28 and 31-35 are withdrawn from consideration by the examiner.

The rejection of claims 1-9 and 29-30 under 35 USC § 112, first paragraph is not maintained.

The rejection of claims 1-9 and 29-30 under 35 USC §102(b) as anticipated by or, in the alternative, under 35 USC §103 as obvious over EPO 31513 is not maintained.

Claims 1-9 and 29-30 stand rejected under 35 USC §102(b) as anticipated by or, in the alternative, under 35 USC §103 as obvious over Prigal for the reasons of record and those set forth below.

The mere fact that column 5 of the patent describes that the physical makeup of the patentee's emulsion consists of globules of particles of a dispersed phase surrounded by oil is not sufficient to warrant removal of this ground of rejection.

Claims 1-9 and 29-30 stand rejected under 35 USC §102(b) as anticipated by or, in the alternative, under 35 USC §103 as obvious over Glass et al. or Cantrell for the reasons of record and those set forth below.

Applicant urges that Glass does not teach "compositions or methods wherein the oil droplets are substantially all less than one micron in size" and that Cantrell "neither recognizes nor discloses the use of advantageous particle size. (page 6 of response)."

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However, the question is not merely what the references expressly or individually teach, but what they would have suggested to one of ordinary skill in the art at the time applicant's invention was made; the references must be considered in their entirety, and such consideration is not limited to the specific working examples.

Furthermore, it is noted that method claims 29-30 are not limited to methods wherein the oil droplets are substantially all less than one micron in size.

Claims 1-9 and 29-30 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending application serial no. 07/357035.

No unexpected or unobvious results are noted and the claims must be refused.

No claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE

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ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to E. Kraus whose telephone number is (703) 308-4214.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

ejk *ejk*

November 17, 1991

*Lester L. Lee*  
LESTER L. LEE  
PRIMARY PATENT EXAMINER  
ART UNIT 185  
*12/11*